

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MICHAEL LARSON,

Plaintiff,

vs.

RUSH FITNESS CORPORATION,

Defendant.

ORDER

No. 3:12-cv-109

(Campbell/Shirley)

ORDER

On October 17, 2012, United States Magistrate Judge C. Clifford Shirley, Jr., issued a Report and Recommendation [Doc. 28] recommending that the Plaintiff Michael Larson's Motion for Conditional Certification, Expedited Discovery, and Court-Authorized Notice [Doc. 8] be GRANTED IN PART and DENIED IN PART as follows:

1. The Plaintiff be ORDERED to file a final proposed notice and consent form, conforming to the allegations of the Amended Complaint and the representations of Plaintiff's counsel to the Court – to, for example, correct the statement that the purported class will include “all other past and present salaried employees of The Rush who have worked in the membership department” – within **five (5) days** of the entry of an Order adopting this Report and Recommendation;
2. The Defendant be afforded **ten (10) days** after the filing final proposed notice to state any objections;
3. The Defendant be afforded **twenty (20) days** after the filing final proposed notice to provide the counsel for the Plaintiff the names, addresses, dates of employment of the persons, and locations of employment of membership managers who served as membership managers in the three years preceding the

filing of the Complaint in this matter. This information should be provided in an appropriate electronic format.

Defendant Rush Fitness Corporation (“The Rush”) has objected to the Report and Recommendation, contending that (1) the Report and Recommendation was based on an incorrect reading and application of O’Brien v. Ed Donnelly Enterprises, Inc., 575 F.3d 567 (6th Cir. 2009), and Shipes v. Amurcon Corp., 2012 WL 995362 (E.D. Mich. March 23 2012); and (2) the Report and Recommendation did not consider all of the proof in the record, which, according to The Rush, “clearly demonstrates that the purported collective group is not similarly situated to the Plaintiff.” [Doc. 31].

The court disagrees with The Rush’s objections. The court has carefully reviewed all relevant materials in the files and concludes that the Report and Recommendation is correct in every material respect and is adopted as the order of this court.

SO ORDERED this 23rd day of September, 2013.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
U.S. District Court Judge